

AMENDED IN ASSEMBLY JULY 5, 2000

AMENDED IN SENATE MAY 17, 2000

AMENDED IN SENATE APRIL 24, 2000

SENATE BILL

No. 2130

Introduced by Senator Sher

February 25, 2000

An act to amend Sections 42400.4 and 43021 of, and to add Sections 42410 and 44054.5 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 2130, as amended, Sher. Air pollution: penalties.

(1) Existing law prescribes various civil penalties that may be imposed by the State Air Resources Board for a violation of specified state air board regulations relating to vehicular and nonvehicular air pollution control. Existing law also authorizes any city attorney, with the consent of the district attorney, upon the complaint of the state board, to bring an action for unfair trade practices.

This bill would authorize the state board to impose administrative penalties as an alternative to seeking civil penalties for certain violations. The bill would authorize the state board to impose an administrative penalty up to the maximum amount the state board is authorized to impose as a civil penalty for that violation. The bill would also limit the state board's authority to impose an administrative penalty to a maximum of \$10,000 per day in which there is a violation not to exceed \$200,000 per administrative action *for any violation*

arising from the same conduct. The bill would also provide for administrative review under existing state board administrative hearing procedure regulations, except that this bill would require that the hearings be conducted by an administrative law judge appointed by the Office of Administrative Hearings. The bill would also provide for judicial review of an administrative hearing in conformance with existing law. The bill would also prohibit the state board from causing an action to be brought by any city attorney against any person upon whom the state board has imposed an administrative penalty.

(2) Existing law also prescribes criminal penalties for a violation of a federally enforceable operating permit issued pursuant to specified provisions of the federal Clean Air Act or for a violation of specified laws under that act relating to stationary sources. Under existing law, the recovery of civil penalties for a violation of specified state laws relating to nonvehicular emission limitations precludes criminal prosecution for the violations under the act. Other existing law, as of January 1, 2003, makes a person who transports, or who provides a vehicle to transport, motor vehicle fuel for a motor vehicle fuel distributor who is not in compliance with specified laws, liable for a civil penalty.

This bill would correct erroneous cross-references and delete an obsolete cross-reference in those provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in the
2 enactment of this act to do all of the following:

3 (a) Provide the state board with an alternative to
4 pursuing civil penalties through the court system by
5 allowing the state board to pursue penalties for minor
6 violations through an alternative hearing process.

7 (b) Provide administrative penalty authority only for
8 those categories of violations for which the state board
9 maintains the authority to impose civil penalties.



1 (c) Provide the state board with the authority to
2 impose administrative penalties comparable to the
3 penalties imposed in the civil court system. It is not the
4 intent of the Legislature to modify the level of penalty
5 impositions beyond historic levels.

6 SEC. 2. Section 42400.4 of the Health and Safety Code
7 is amended to read:

8 42400.4. (a) In any district where a Title V permit
9 program has been fully approved by the federal
10 Environmental Protection Agency, any person who
11 knowingly violates any federally enforceable permit
12 condition or any fee or filing requirement applicable to
13 a Title V source is guilty of a misdemeanor and is subject
14 to a fine of not more than ten thousand dollars (\$10,000).

15 (b) In any district in which a Title V permit program
16 has been fully approved by the federal Environmental
17 Protection Agency, any person who knowingly makes any
18 false material statement, representation, or certification
19 in any form or in any notice or report required of a Title
20 V source of a federally enforceable permit requirement,
21 or who knowingly renders inaccurate any monitoring
22 device or method required of a Title V source, is guilty of
23 a misdemeanor and is subject to a fine of not more than
24 ten thousand dollars (\$10,000).

25 (c) The recovery of civil penalties pursuant to Section
26 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution
27 pursuant to this section for the same offense. When a
28 district refers a violation to a prosecuting agency, the
29 filing of a criminal complaint is grounds requiring the
30 dismissal of any civil action brought pursuant to this
31 article for the same offense.

32 (d) Each day during any portion of which a violation
33 of subdivision (a) or (b) occurs is a separate offense.

34 (e) This section shall not become operative in a district
35 until the federal Environmental Protection Agency fully
36 approves that district's Title V permit program.

37 (f) This section applies only to violations described in
38 subdivisions (a) and (b) that are not otherwise subject to
39 a fine of ten thousand dollars (\$10,000) or more pursuant
40 to Section 42400.1, 42400.2, or 42400.3.

1 SEC. 3. Section 42410 is added to the Health and
2 Safety Code, to read:

3 42410. (a) As an alternative to seeking civil penalties
4 under Sections 42402 and 42403 for a violation of
5 regulations of the state board, the state board may
6 independently impose an administrative penalty in an
7 amount equal to or less than the amount that may be
8 imposed as a civil penalty pursuant to Section 42402 or
9 42403 for each violation. Any administrative penalty
10 imposed under this section shall be imposed as an
11 alternative to, and not in addition to, a civil penalty
12 imposed pursuant to this article. No administrative
13 penalty imposed by the state board pursuant to this
14 section shall exceed the amount that the state board is
15 authorized to impose as a civil penalty for the applicable
16 violation, and no administrative penalty imposed
17 pursuant to this section shall exceed ten thousand dollars
18 (\$10,000) for each day in which there is a violation up to
19 a maximum of two hundred thousand dollars (\$200,000)
20 per administrative action.

21 (b) Nothing in this section restricts the authority of the
22 state board to negotiate mutual settlements under any
23 other penalty provision of law that exceeds the penalty
24 amount set forth in Section 42402 for each violation, or
25 that imposes a total administrative penalty amount in
26 excess of two hundred thousand dollars (\$200,000).

27 (c) The administrative penalties authorized by this
28 section shall be imposed and recovered by the state board
29 in administrative hearings established pursuant to Article
30 3 (commencing with Section 60065.1) and Article 4
31 (commencing with Section 60075.1) of Subchapter 1.25 of
32 Chapter 1 of Division 3 of Title 17 of the California Code
33 of Regulations, except that the hearings shall be
34 conducted by an administrative law judge appointed by
35 the Office of Administrative Hearings.

36 (d) Nothing in this section authorizes the state board
37 to impose penalties for categories of violations for which
38 the state board may not recover penalties in a civil action.

39 (e) If the state board imposes any administrative
40 penalties pursuant to this section, the state board may not

1 bring any action pursuant to Chapter 4 (commencing
2 with Section 17000) of Part 2 of Division 7 of the Business
3 and Professions Code.

4 (f) A party adversely affected by the final decision in
5 the administrative hearing may seek independent
6 judicial review by filing a petition for a writ of mandate
7 in accordance with Section 1094.5 of the Code of Civil
8 Procedure.

9 (g) This section shall only apply to violations that
10 occur on or after January 1, 2001.

11 SEC. 4. Section 43021 of the Health and Safety Code
12 is amended to read:

13 43021. (a) For purposes of this section, “motor
14 vehicle fuel distributor” means any person who (1)
15 refines, blends, or otherwise produces motor vehicle fuel,
16 or (2) with an ownership interest in the fuel, transports
17 or causes the transport of motor vehicle fuel at any point
18 between a production or import facility and a retail
19 outlet, or sells, offers for sale, or supplies motor vehicle
20 fuel to motor vehicle fuel retailers.

21 (b) Any motor vehicle fuel distributor who conducts
22 business within the state, annually on January 1, shall
23 inform the state board in writing of the distributor’s
24 principal place of business, which shall be a physical
25 address and not a post office box, and any other place of
26 business at which company records are maintained or
27 refining activities are conducted.

28 (c) The state board shall supply each complying motor
29 vehicle fuel distributor with a certificate of compliance
30 with this section not later than June 30. The certificate
31 shall be effective from July 1 of the year of issuance
32 through June 30 of the following year.

33 (d) All motor vehicle fuel distributors shall maintain
34 complete records of each purchase, delivery, or supply of
35 motor vehicle fuel for a period of not less than two years
36 in the physical locations reported pursuant to subdivision
37 (b) and shall not move the records to another physical
38 location without notifying the state board of the new
39 location. A complete record for each delivery shall consist
40 of not less than a copy, or the information contained

1 therein, of the bills of lading from the refinery or bulk
2 terminal from which the fuel is received, the delivery
3 ticket or receipt showing the location of the fuel at the
4 time of sale, and the invoice showing the purchaser of the
5 fuel. All those records may be kept in physical or
6 electronic format and are subject to inspection and
7 duplication by the state board.

8 (e) Any motor vehicle fuel distributor who
9 intentionally fails to comply with subdivision (b) or (d)
10 is liable for a civil penalty not to exceed one thousand
11 dollars (\$1,000) for each day of noncompliance.

12 (f) No person shall knowingly transport motor vehicle
13 fuel for any motor vehicle fuel distributor who is not in
14 possession of a current certificate of compliance as
15 described in subdivision (c). Any person who transports
16 or provides vehicles to transport motor vehicle fuel for a
17 noncomplying distributor is liable for a civil penalty not
18 exceeding ten thousand dollars (\$10,000) for each day.
19 However, any person who transports, or provides
20 vehicles to transport, motor vehicle fuel for a distributor
21 who is in possession of a current certificate of compliance
22 shall not be liable for any penalties under this subdivision
23 unless that person has specific knowledge of
24 noncompliance.

25 (g) Any retailer who knowingly sells or supplies motor
26 vehicle fuel that was delivered to the retailer by, or on
27 behalf of, a noncomplying motor vehicle fuel distributor
28 is liable for a civil penalty not to exceed ten thousand
29 dollars (\$10,000) for each transaction.

30 (h) Any retailer who sells motor vehicle fuel that does
31 not comply with regulations of the state board, after both
32 oral and written notice to cease have been delivered to
33 the owner, manager, or attendant on duty at the facility,
34 and upon failure to comply with that notice, is subject to
35 the issuance of a cease and desist order by the state board
36 and a penalty of ten thousand dollars (\$10,000) for each
37 day of noncompliance with the cease and desist order.

38 (i) The state board shall annually compile and publish
39 a complete listing of all certified wholesale petroleum

distributors, and shall mail a copy to every licensed transporter of petroleum products.

(j) This section shall become operative January 1, 2003.

SEC. 5. Section 44054.5 is added to the Health and Safety Code, to read:

44054.5. (a) As an alternative to seeking civil penalties under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), for violation of state board regulations, the state board may independently impose an administrative penalty for a violation of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to vehicular air pollution control except as otherwise provided in this division. No administrative penalty imposed pursuant to this section shall exceed the amount that the state board is authorized to assess as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars (\$10,000) for each day in which there is a violation up to a maximum of two hundred thousand dollars (\$200,000) per administrative action *for any violation arising from the same conduct. This two hundred thousand dollar (\$200,000) maximum penalty limitation does not apply in any judicial proceeding involving violations committed under this part.*

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds the penalty amount set forth in Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, or Chapter 6 (commencing with Section 44200), for each violation, or that imposes a total administrative penalty amount in excess of two hundred thousand dollars (\$200,000).

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4

1 (commencing with Section 60075.1) of Subchapter 1.25 of
2 Chapter 1 of Division 3 of Title 17 of the California Code
3 of Regulations, except that the hearings shall be
4 conducted by an administrative law judge appointed by
5 the Office of Administrative Hearings.

6 (d) Nothing in this section authorizes the state board
7 to impose penalties for categories of violations for which
8 the state board may not recover penalties in a civil action.

9 (e) If the state board imposes any administrative
10 penalties pursuant to this section, the state board may not
11 bring any action pursuant to Chapter 4 (commencing
12 with Section 17000) of Part 2 of Division 7 of the Business
13 and Professions Code.

14 (f) A party adversely affected by the final decision in
15 the administrative hearing may seek independent
16 judicial review by filing a petition for a writ of mandate
17 in accordance with Section 1094.5 of the Code of Civil
18 Procedure.

19 (g) This section shall only apply to violations that
20 occur on or after January 1, 2001.

